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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,546	05/22/2000	Nathalie Jager Lezer	05725.0588-00000	1552

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EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 11/05/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/576,546

Applicant(s)

LEZER, NATHALIE JAGER

Examiner

Susan T. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of applicant's Request for Extension of Time filed 01/24/03 and 08/21/03, Notice of Appeal filed 01/24/03, and Appeal Brief filed 08/21/03.

Interview Summary

To place the application in condition for allowance, it was suggested to:

1) Amend the claims to further clarify the phrase "compatibilized". The phrase "total or partial solubilization or dispersion" was suggested (see specification page 8, lines 5-7).

2) Amend the phrase "An anhydrous care or make-up" to "An anhydrous composition in the form of make-up or care..."

3) Incorporate the Markush group of polyol and fiber (claims 4 and 7) into the generic claims.

4) Incorporate the percent amounts of polyol and fiber into generic claims.

Applicant refused to amend the claims, and suggested open prosecution in the form of a non-final office action. Thus, reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears that "silk fiber" appears twice in claim 7 (see lines 2 and 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 14-24, and 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evison et al. WO 98/19652.

Evison teaches an anhydrous in the form of cosmetic, cleansing, or therapy from (see abstract). The composition comprises absorbent matrix including mixture of protein and hydrolyzed starch (pages 5-6); oils; surfactant; pharmaceutical active agent; cosmetic active agent, such as 1,3-butylenes glycol, panthenol, and pigments (pages 9-10); and toiletries active agent (page 10). The anhydrous cosmetic form can further comprises moisturizing agent, e.g., butylenes glycol; waxes; powder, e.g., cellulose, polymer, nylon, Teflon[®], silk powder, or mixtures thereof (pages 14-15); and binder (page 19).

Evison does not specifically teach waxes, cellulose, polymer, nylon, Teflon[®]; silk powder, or mixtures thereof is in the form of fiber having the claimed length or diameter.

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However, no criticality is seen in the particular claimed limitation (L/D of fiber), because there are no unexpected and/or unusual results, which have been shown over Evison's invention. Applicant's attention is drawn to Evison at pages 11-12, where Evison recognizes the properties desired by applicant, *e.g.*, enhance effect, synergistically enhance topical delivery, homogeneous dispersion, new and more intense shades of color, lip glosses, gloss modifiers. Thus, it would have been obvious for one of ordinary skill in the art to, by routine experimentation optimize the anhydrous cosmetic composition of Evison to obtain the claimed invention, because Evison teaches the use of similar materials for the same use, namely, anhydrous cosmetic composition.

Claims 1-7, 14-24, and 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evison et al., in view of Arraudeau et al. US 4,659,562.

Evison is relied upon for the reason stated above. Evison is silent as to the teaching of the L/D of fiber.

Arraudeau teaches the use of fiber having length much greater than diameter in an anhydrous cosmetic composition (column 1, lines 11-62). Thus, it would have been obvious for one of ordinary skill in the art to modify the anhydrous cosmetic composition of Evison using the fiber having length much greater than diameter in view of the teaching of Arraudeau, because the references teach the advantageous result in the use of the similar materials in anhydrous cosmetic composition. The expected result would be an anhydrous make-up formulation that last long, and do not smear.

With regarding to the length and diameter of the fiber, it is the position of the examiner that it would have been obvious for one of the ordinary skill in this art to, by routine experimentation determine a suitable length and diameter of the fiber to obtain a desire anhydrous cosmetic formulation that will provide a long lasting appearance, and thus will not require repeated applications.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evison et al., in view of Bara et al. US 6,177,091.

Evison is relied upon for the reasons stated above. Evison does not teach parleam oil.

Bara teaches an anhydrous cosmetic composition comprising fiber, and oils, e.g., parleam oil (columns 2-5). Thus, it would have been obvious for one of ordinary skill in the art to use parleam oil of Bara for the anhydrous cosmetic composition of Evison. The reason for this modification is to obtain an anhydrous cosmetic composition that prevents unaesthetic folds, migration, and thus provides long lasting property on skin or lips. The expected result would be an anhydrous make-up formulation containing fiber useful for cosmetic fields.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600